

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DARRYL BOYD ADKINS,)
)
 Plaintiff,)
)
 v.) 1:14CV132
)
 OFFICER MCDONALD, et al.,)
)
 Defendant(s).)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a prisoner of the State of North Carolina, submitted a civil rights action pursuant to 42 U.S.C. § 1983, together with an application to proceed *in forma pauperis*. Plaintiff alleges that Defendants, who are correctional officers in Butner, North Carolina, violated his constitutional rights through the use of excessive force. For the reasons explained below, this action should be transferred to the Eastern District of North Carolina.

The statute for determining venue in the present case is 28 U.S.C. § 1391, which reads in pertinent part:

A civil action may be brought in--

- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
- (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject

to the court's personal jurisdiction with respect to such action. 28 U.S.C. § 1391(b).

Here, both of the Defendants are employed in Butner, North Carolina, in the Eastern District of North Carolina, and it appears that the events or omissions giving rise to the claims also occurred in that District. Thus, venue is not proper in the Middle District, but is proper in the Eastern District of North Carolina. Moreover, the Court has discretion to transfer this action to an appropriate district under 28 U.S.C. § 1404(a) or 28 U.S.C. § 1406(a). See, e.g., Saudi v. Northrop Grumman Corp., 427 F.3d 271, 277 (4th Cir. 2005); In re Carefirst of Maryland, Inc., 305 F.3d 253, 255–56 (4th Cir. 2002). Accordingly, and in the interest of justice, this case should be transferred to the United States District Court for the Eastern District of North Carolina for further proceedings.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation.

IT IS RECOMMENDED that this action be transferred to the United States District Court for Eastern District of North Carolina.

This, the 5th day of June, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge